

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH, COURT-II

KOLKATA

C.P. No. 192/KB/2022

**A Winding up petition under Section 271-272 of the Companies Act,
2013 read with Rule 11 of the National Company Law Tribunal
Rules, 2016.**

IN THE MATTER OF:

The Registrar of Companies, West Bengal

.....Petitioner

-VERSUS-

**1. TOPTRACK TRADERS PRIVATE LIMITED (CIN: U74999WB2010PTC! 53436), a
Company incorporated under the provisions of the Companies Act, 1956
and having its registered office at 59, ELLIOT ROAD KOLKATA - 700016,
WEST BENGAL, INDIA.**

**2. DIPAK SARKAR (DIN: 02697115), Director of TOPTRACK TRADERS PRIVATE
LIMITED, presently residing at 760/1, JAWPUR ROAD, S.H.K.B SARANI,
RAMKRISHNA PARK, SOUTH DUMDUM (M), MOTIJHEEL, KOLKATA 700074, WEST
BENGAL, INDIA.**

3. **SARIT CHAKRABORTY** (DIN: 02694093), Director of TOPTRACK TRADERS PRIVATE LIMITED, presently residing at 95/B ANANDA PALIT RD, KOLKATA - 700014, WEST BENGAL, INDIA.

.....Respondents

Coram:

Shri. Labh Singh, Member (Judicial)

Ms. Rekha Kantilal Shah, Member (Technical)

Appearances (via physical mode/virtual mode)-:

For RoC, West Bengal

- i. Mr. Ajay Chaubey, Adv
- ii. Ms. Hema Mukherjee, Adv.
- iii. Ms. Paromita Indu, Adv.

Date of Pronouncement: 22.06.2026

O R D E R

Per: Rekha Kantilal Shah, Member (Technical)

1. The court convened through physical mode.
2. The present Company Petition has been filed by the Registrar of Companies, West Bengal seeking the following reliefs:

“i. That the TOPTRACK TRADERS PRIVATE LIMITED (i.e., Company) be wound up by the Tribunal under the provisions of Section 271 (c) read with Section 248(8), 272(1)(d) and 272(3) of the Companies Act, 2013;

ii. That the Official Liquidator, High Court of Calcutta be appointed as a provisional liquidator of the Company till the final disposal of the instant

petition to take charge of its-affairs and business including its assets, documents, Book of accounts etc and action under sections 339 to 342 of the Companies Act, 2013.

iii. That the Official Liquidator attached to the Hon'ble High Court, Calcutta be appointed as Liquidator and be directed to take possession of the assets and properties of the Company TOPTRACK TRADERS PRIVATE LIMITED;

iv. That the TOPTRACK TRADERS PRIVATE LIMITED, be restrained from disposing of its assets and properties pending disposal of the instant petition;

v. Ad-interim order in terms of prayers above;

vi. Costs and incidental to the instant petition be directed to be paid out of the assets and properties of TOPTRACK TRADERS PRIVATE LIMITED;

vii. Such other and further order or orders be made and / or direction or directions may be given as this Hon'ble Tribunal may deem fit and proper in terms of the applicable provisions of the Companies Act, 2013.

3. The respondent company, namely "TOPTRACK TRADERS PRIVATE LIMITED" was incorporated on 25th September, 2010 under the Companies Act, 1956 as a private company limited by shares. The registered address of the company is situated at 59, ELLIOT ROAD KOLKATA - 700016, WEST BENGAL, INDIA. The authorised share capital of the Company is Rs. 2,00,00,000/- (Rupees Two Crore Only) and the paid up share capital is Rs. 1,76,00,000/- (Rupees One Crore Seventy Six Lakhs Only).

4. It has been submitted that the name of the Respondent Company was struck off from the Register of Companies on 30th June, 2017 after due compliance with the provisions of Section 248 of the Companies Act, 2013, as there reasonable cause to believe that the company was not carrying on any business or operation for the period of

last (two) immediately preceding financial years. Pursuant to the aforesaid action, the Petitioner issued a notice dated 30th June, 2017 under Section 248(5) of the Companies Act, 2013 intimating the Company that its name had been struck off from the Register of Companies with effect from 09th April, 2017.

5. It has been stated that the Ministry of Corporate Affairs vide letter no. 5/15/2017/CL-II (ER) dated 15th February 2018 directed the petitioner to conduct inquiry in respect of books of accounts and accounting treatment of M/s. TOPTRACK TRADERS PRIVATE LIMITED under section 210(1)(c) of the Companies Act, 2013.
6. It has been stated that, during the course of investigation into the affairs of the Vibgyor Group of Companies, the Inspectors observed that the subject company was incorporated in the year 2010. The Board of Directors of the company comprised two directors, namely, Shri Dipak Sarkar and Shri Sarit Chakraborty. Further, as per the records available on the MCA Portal, the company had filed its Balance Sheet and Annual Return only up to the Financial Year 2012-13. It has been stated that Shri Dipak Sarkar and Shri Sarit Chakraborty are the present directors of the company, whereas Shri Subrata Sarkar and Shri Mrinal Kumar Dey are its erstwhile directors and that all the aforesaid persons are or were associated as directors in various companies forming part of the Vibgyor Group, which is presently under investigation.

7. It has been submitted that on the basis of various complaints, writ petitions and the investigation reports submitted in respect of Vibgyor Allied Infrastructure Limited, it was revealed that the companies belonging to the Vibgyor Group, namely, Vibgyor Allied Infrastructure Ltd., Vibgyor Gold Ltd. and Vibgyor Allied Industries Ltd., had fraudulently mobilised funds from the general public. The said entities thereafter invested substantial amounts in the subject company and other group companies, and subsequently defaulted in repayment of maturity proceeds to the investors.

8. It has further been submitted that the investigation further disclosed that TTTPL had allotted an unusually large number of shares at exorbitant premiums in March, 2012 to eight allottees, all of whom were group companies of the Vibgyor Group. However, no reasonable basis or commercial justification for charging such high share premium could be ascertained. The circumstances, therefore, indicate that the subject company, being one of the entities of the Vibgyor Group, was utilised by its directors as a conduit for diversion and siphoning of funds. The details of the said allotment are reproduced hereinbelow:-

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-II
KOLKATA

SL. NO.	NAME OF THE ALLOTTEES	NO. OF SHARES ALLOTTED	WHETHER AT PREMIUM	TOTAL AMOUNT PAID (IN RS.)
1	Vibgyor Share and Securities Pvt. Ltd.	1,00,000	Rs. 40/-	50,00,000
2	Vibgyor Textiles Pvt. Ltd.	1,00,000	Rs. 40/-	50,00,000
3	Garima Niwas Pvt. Ltd.	1,00,000	Rs. 40/-	50,00,000
4	Vibgyor Gold Limited	8,50,000	Rs. 40/-	4,25,00,000
5	Vibgyor Overseas Pvt. Ltd.	1,00,000	Rs. 40/-	50,00,000
6	Vibgyor Commercial Services Pvt. Ltd.	1,00,000	Rs. 40/-	50,00,000
7	Vibgyor Industries Pvt. Ltd.	2,00,000	Rs. 40/-	1,00,00,000
8	Tuff Tubes (Orissa) Pvt. Ltd.	2,00,000	Rs. 40/-	1,00,00,000

9. It has been submitted that it was also observed from the details of investments reflected in the financial statements of the subject company that substantial investments had been made in unquoted shares of closely held private and public companies, predominantly in entities having common directorships, namely, other companies belonging to the Vibgyor Group. The investments shown by TTTPL in its Financial Statements are reproduced hereinbelow:-

SL. No.	Name of Investments	No. of shares	Amount	No. of shares	Amount	No. of shares	Amount
		F.Y. 2010-11		F.Y. 2011-12		F.Y. 2012-13	
1	Vibgyor Allied Infrastructure Limited (Preference Shares)	60,000	6,00,00,000	1,00,000	10,00,00,000	1,00,000	10,00,00,000
2	Kotiratan Tie up Pvt. Ltd.	-	-	-	-	4,900	49,000
3	Linkstar Niketan Pvt. Ltd.	-	-	-	-	4,900	49,000
4	Viewmore Dealmark Pvt. Ltd.	-	-	-	-	4,800	48,000
	Total	60,000	6,00,00,000	1,00,000	10,00,00,000	1,14,600	10,01,46,000

10. It has further been submitted that the investigation further revealed that Shri Rana Bhadra and Shri Raja Bhadra, along with others, had incorporated several companies of the Vibgyor Group and had acted as directors therein. Although neither Shri Rana Bhadra nor Shri Raja Bhadra were directors or shareholders in the subject company, the subject company had engaged in continuous financial transactions with companies of the Vibgyor Group since its incorporation. In this regard, it was observed that Vibgyor Allied Infrastructure Limited (VAIL) had allotted preference shares to TTTPL during the Financial Year 2010-11. It has been submitted that the aforesaid facts prima facie establish that the subject company, along with other group companies, was involved in round-tripping of funds generated through monies fraudulently collected from the public by other companies of the Vibgyor Group, including Vibgyor Allied Infrastructure Ltd., Vibgyor Gold Ltd. and Vibgyor Allied Industries Ltd.
11. Upon examination of the bank statements furnished by ICICI Bank for the period from 01.04.2010 to 31.03.2017, it was noticed that substantial amounts were credited into the account of the subject company during January, 2011 from various group companies, particularly those entities to whom shares had been allotted by TTTPL. It was further observed that the said amounts were subsequently debited during February, 2011. In particular, TTTPL transferred sums of Rs. 5,00,00,000/- and Rs. 1,00,00,000/- to

Vibgyor Allied Infrastructure Limited on 07th February, 2011 and 18th February, 2011 respectively, purportedly towards investment during the Financial Year 2010-11. Likewise, TTTPL received an amount of Rs. 4,00,00,000/- from Vibgyor Gold Ltd. on 15th November, 2011, which amount appears to have been transferred onward to Vibgyor Allied Infrastructure Limited on 17th November, 2011. Except for the aforesaid transactions, no significant financial activity was undertaken by the company after 17.11.2011.

12. It has been submitted that the aforesaid transactions clearly indicate that the monies received ostensibly towards allotment of shares from group companies were diverted to Vibgyor Allied Infrastructure Limited in the guise of investments, thereby constituting siphoning and diversion of funds. Consequently, it is apparent that the subject company, being an integral constituent of the Vibgyor Group, was actively involved in diversion and siphoning of funds collected from the public by other group companies. Thereafter, the company deliberately defaulted in filing statutory returns as mandated under the Companies Act, 1956, with the apparent object of concealing its true financial affairs.
13. It has been submitted that the default continues till date, as the deposits mobilised from the public by the aforesaid group companies remain unpaid. Furthermore, the last Balance Sheet filed by the subject company reflects the investments and allotments

made in favour of its group companies. It has been submitted that the exact quantum of funds collected from the public could not be ascertained due to non-cooperation on the part of the directors, non-production of books of accounts and non-availability of financial statements on the MCA Portal from the Financial Year 2013-14 till the date of striking off of the company, i.e., 09.06.2017.

14. As such, it has been submitted that the affairs of the company were conducted in a fraudulent manner and that the persons concerned with the management of the company were guilty of fraud in relation thereto. It has further been submitted that the material on record further establishes that the directors had acted with intent to prejudice and injure the interests of creditors and investors. Accordingly, sufficient grounds exist for winding up of the company under Section 271(c) read with Section 248(8) of the Companies Act, 2013.
15. It has been submitted that the office of Regional Director (Eastern Region), MCA had issued a notice to the Company under second proviso of sub-section (3) of section 272 of the Companies Act, 2013 to give an opportunity for making representation vide letter no. RD/T/34899/272(3)/22/10982 dated 22nd March, 2022, however, no reply was received from the Company.
16. It has further been submitted that the Directorate has accorded its sanction to the petitioner to file the instant winding up

petition under Section 271 (e) read with Section 248(8) of the Companies Act, 2013 vide its letter dated 07th April, 2022 against the respondent Company.

17. It has been submitted that it would be just and equitable for this Tribunal to order the winding up of the Respondent Company under Section 271(c) read with Section 248(8) & Sections 272(1)(d) and 272(3) of the Companies Act, 2013, and to appoint the Official Liquidator attached to the Hon'ble High Court at Calcutta, with a direction to forthwith take possession of all the assets and properties of the Company, both movable and immovable, including its books of account, records, and bank accounts.

18. Section 271 and 272 of the Companies Act, 2013 state as follows:-

271. Circumstances in which company may be wound up by Tribunal.—A company may, on a petition under section 272, be wound up by the Tribunal,—

(a) if the company has, by special resolution, resolved that the company be wound up by the Tribunal;

(b) if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;

(c) if on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;

(d) if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or

(e) if the Tribunal is of the opinion that it is just and equitable that the company should be wound up.

272. Petition for winding up.—(1) *Subject to the provisions of this section, a petition to the Tribunal for the winding up of a company shall be presented by—*

- (a) the company;*
- (b) any contributory or contributories;*
- (c) all or any of the persons specified in clauses (a) and (b);*
- (d) the Registrar;*
- (e) any person authorised by the Central Government in that behalf; or*
- (f) in a case falling under clause (b) of section 271, by the Central Government or a State Government.*

(2) A contributory shall be entitled to present a petition for the winding up of a company, notwithstanding that he may be the holder of fully paid-up shares, or that the company may have no assets at all or may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities, and shares in respect of which he is a contributory or some of them were either originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months immediately before the commencement of the winding up or have devolved on him through the death of a former holder.

(3) The Registrar shall be entitled to present a petition for winding up under section 271, except on the grounds specified in clause (a) 2 [of that section]:

Provided that the Registrar shall obtain the previous sanction of the Central Government to the presentation of a petition:

Provided further that the Central Government shall not accord its sanction unless the company has been given a reasonable opportunity of making representations.

(4) A petition presented by the company for winding up before the Tribunal shall be admitted only if accompanied by a statement of affairs in such form and in such manner as may be prescribed.

(5) A copy of the petition made under this section shall also be filed with the Registrar and the Registrar shall, without prejudice to any other provisions, submit his views to the Tribunal within sixty days of receipt of such petition.

19. Section 248(8) of the Companies Act, 2013 reads thus:-
(8) Nothing in this section shall affect the power of the Tribunal to wind up a company the name of which has been struck off from the register of companies
20. It is pertinent to note herein that this Tribunal had directed the Petitioner to issue notice upon the Respondent by Speed Post vide order dated 02nd August, 2022. An affidavit of service dated 22nd April, 2024 in this regard has been filed by the Petitioner.
21. Further, in terms of Section 273(1) read with Rule 7 of the Companies (Winding Up) Rules, 2020, this Tribunal, vide order dated 26th June, 2024, had directed the Petitioner to effect publication of the petition in newspapers so as to afford the Respondent Company with a reasonable opportunity to make its representation. In compliance thereof, the Petitioner caused paper publication of the petition on 06th December, 2024 in "The Times of India" and "Ei Samay". However, despite such publication, no reply or representation has been filed by the Respondent Company in opposition to the present Company Petition.
22. It is observed from the records of the captioned matter, that despite paper publication, no reply or representation has been filed by the Respondent Company in opposition to the present Company Petition. As such, on the basis of submissions made by the Applicant, and considering that no material on record has been submitted by the Respondent Company or its directors to controvert the submissions made by the Petitioner despite being

provided with multiple opportunities for representation, we are inclined to allow the present application.

23. In view of the above we, therefore, hereby order as follows:

a) The present Company Petition stands admitted. The Respondent Company being TOPTRACK TRADERS PRIVATE LIMITED is directed to be Wound Up by this Tribunal under the provisions of the Companies Act, 2013.

b) The Official Liquidator attached with Hon'ble High Court at Calcutta is appointed as the Company Liquidator of the Respondent Company in terms of Section 275 (1) of the Companies Act, 2013.

c) In terms of Section 277 (1) and 277 (2) of the Act, Registry is directed to cause intimation to the Company Liquidator and the Registrar of Companies, West Bengal. On receipt of the copy of such order, the Registrar shall make an endorsement to that effect and notify in the Official Gazette that such an order has been made.

d) The Company Liquidator is directed to file a declaration in Form WIN 10, disclosing conflict of interest or lack of independence in respect of his appointment, if any, with this Tribunal within seven days from the pronouncement of this order.

e) In accordance with Section 277(3) of the Act, this liquidation order shall be deemed to be a notice of discharge to the officers,

employees, and workmen of the Company, except when the business of the Company is continued.

f) The Company Liquidator shall initiate the liquidation process in accordance with Sections 277 (4), 277(5), 277(6), 277(7), 277(8), 293 and 294 of the Act. The Company Liquidator shall fulfil the following functions, namely:

(i) Taking into custody, all the properties, actions and actionable claims to which the Respondent Company appears to be entitle to;

(ii) Preservation and protection of the properties of the Respondent Company.

(iii) Examination of the Statement of Affairs.

(iv) Recovery of property, cash or any other asset of the company including benefits derived their form;

(v) Review of audit reports and accounts of the Company

(vi) Sale of asset

(vii) Finalization of list of creditors and contributories;

(viii) Compromise, abandonment and settlement of claims;

(ix) Payment of dividends, if any: and

(x) Any other function, as the Tribunal may direct from time to time.

g) As envisaged under section 279 (1) of the Act, no suit or other legal proceeding shall be commenced, or if pending at the date of the Winding Up order, shall be proceeded with, by or against the Company, except with the leave of this Tribunal and subject to such terms as this Tribunal may impose.

h) In accordance with section 281, the Company Liquidator shall submit to this Tribunal, a report in Form 16 within sixty days of passing this order. Further, the Company Liquidator shall file periodical reports to the Tribunal as envisaged under section 288.

i) The Company Liquidator shall prepare and file before this Tribunal a provisional list of contributories of the Company in terms of Rule 28 of the Companies (Winding Up) rules, 2020 within twenty-one days from the date of this order.

j) There shall be an Advisory Committee, having powers and functions in terms of section 287. The meeting of the said Advisory Committee will be convened in accordance in terms of Section 287(3). The Company Liquidator shall report the result of such meeting to the tribunal within 7 days from the holding of the said meeting.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-II
KOLKATA

- k) All power and duties of the Company Liquidator will be exercised in accordance with section 290 and section 292.
- l) The Company Liquidator shall also file its report with the Tribunal as per section 281 of the act.
- m) List C.P. No. 192/KB/2022 on 14.08.2026 for filing of Periodical Report.
- n) Copy of the order be sent to the parties, the Company Liquidator, The Registrar of Companies, West Bengal and the Authorized Representative for Petitioner, within seven days through email and registered post.
- o) Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

(Rekha Kantilal Shah)

(Labh Singh)

Member (Technical)

Member (Judicial)

Order signed on the 22nd day of June, 2026

H.T. (LRA)